



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 04, 2022

IN THE MATTER OF:

Appeal Board No. 622542

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 24, 2022 (), the Administrative Law Judge overruled the Commissioner of Labor's timeliness objection and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination disqualifying the claimant from receiving benefits, effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

Our review of the record reveals that the case should be remanded to hold a hearing. Although the record establishes that the claimant did not respond to the questionnaire mailed by the Department of Labor, the evidence fails to establish that the claimant received the questionnaire prior to the issuance of the initial determination indicating that he did not disclose a compelling reason for quitting his job. Moreover, information and documents provided to the Department by the employer prior to the issuance of the determination and prior to the hearing, reflect that the employer and the Department were aware that the claimant's medical condition was a factor in his separation from

employment. Therefore, the parties shall be given an opportunity to provide testimony and other evidence regarding the circumstances of the claimant's separation from employment.

The parties are placed on notice that the hearing Judge will consider whether and how the claimant's health and medical condition contributed to, or was related to, his separation from employment.

At the remand hearing, both parties shall be prepared to provide testimony and other evidence to establish when, how, and why the claimant's employment ended. This shall include, but not be limited to, evidence regarding whether the claimant had been medically cleared to return to work at the time his employment ended. Documents including e-mails and medical records that were submitted to the hearing section before the prior hearing, and on appeal by the claimant, shall be received into evidence after the appropriate confrontation and opportunity for objection.

The hearing Judge shall receive into the record any other evidence necessary to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination disqualifying the claimant from receiving benefits, effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of the claimant's voluntary separation from employment, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determination disqualifying the claimant from receiving benefits,

effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER